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VIA HAND DELIVERY

September 7, 2007

S. Derek Phelps
Executive Director
Connecticut Siting Council
10 Franklin Square
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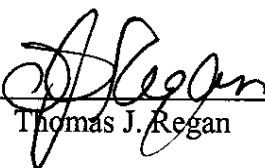
RE: Petition No. 809 – Sprint Nextel’s Request to Intervene

Dear Mr. Phelps:

Enclosed for filing are an original and 20 copies of Sprint Nextel Corporation’s Post-Hearing Brief. Please do not hesitate to contact me with any questions.

Very truly yours,

BROWN RUDNICK BERLACK ISRAELS LLP

By: 
Thomas J. Regan

Enclosures

cc: Service List

40243670 v1 - REGANTJ - 080563/3121

**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

In re:

Extenet Systems, Inc.'s Petition for a Declaratory	:	Petition No. 809
Ruling that the Connecticut Siting Council does not	:	
have Jurisdiction or, in the Alternative, that no	:	
Certificate of Environmental Compatibility and	:	
Public Need is required for the Proposed	:	
Construction of a Distributed Antenna System	:	
along the Merritt Parkway from the New York	:	
Stateline to Westport, Connecticut.	:	September 7, 2007

SPRINT NEXTEL CORPORATION'S POST-HEARING BRIEF

Sprint Nextel Corporation ("Sprint") submits this post-hearing brief to oppose Extenet Systems, Inc.'s ("Extenet") claim that the Connecticut Siting Council (the "Council") does not have jurisdiction over Extenet's proposed Distributed Antenna System ("DAS"). Sprint maintains that: (i) the Council has exclusive jurisdiction over the DAS, which is a series of telecommunication towers and associated telecommunications equipment to be used in a cellular system; and (ii) the authority of the Connecticut Department of Public Utility Control ("DPUC") to license "certified telecommunications providers" such as Extenet does not displace the Council's exclusive jurisdiction over the siting of Extenet's proposed facility.

I. ARGUMENT

The Council has exclusive jurisdiction over the siting of Extenet's DAS because the DAS is a "facility" as defined in Conn. Gen. Stat. § 16-50i(a)(6). Section 16-50i(a)(6) defines a "facility" to mean "telecommunication towers, including associated telecommunications equipment, owned or operated by . . . a certified telecommunications provider or used in a cellular system" It is undisputed that Extenet's DAS would consist of "telecommunications equipment . . . used in a cellular system." *See* Petition at 3-7.

Instead, Extenet claims that the DAS is not a "facility" because the new poles on which portions of the DAS will be installed are not "towers." The Council's regulations define a "tower" as "a structure, whether free standing or attached to a building or another structure, that has a height greater than its diameter and that is high relative to its surroundings" Conn. Agencies Regs. § 16-50j-2a. Again, there is no dispute that each of the new DAS poles has a height greater than its diameter. Extenet instead argues that the DAS is not a "tower" because none of its poles are "high relative to its surroundings." This argument is unpersuasive.

In what has been repeatedly recognized as an extremely sensitive area of the State from a visual and cultural standpoint, Extenet's DAS will require the installation of seven new wood structures - with heights of up to 40 feet - along a twenty mile segment of the Merritt Parkway in Fairfield County. Petition at 6. In fact, review of the Council's "Database of CSC-Approved Telecommunications Sites" (www.ct.gov/csc) provides several examples of free standing telecommunication facilities under 50 feet tall that were unquestionably deemed "towers" by the Council and were therefore subject to the Council's jurisdiction. *See, e.g.*, the 40-foot tower at

430 John Street in Bridgeport, the 50-foot tower at Foot Hills Road in Haddam, the 45-foot tower at 484 Meriden Road in Middlefield, the 49-foot tower at 585 New Haven Road in Naugatuck and the 40-foot tower at 29 South Main Street in West Hartford. Moreover, given the historical significance and distinction of the Merritt Parkway and the place it holds on the National Register of Historic Places, it is best left to the Council's discretion as to whether or not Extenet's seven new structures are "high" relative to their surroundings and, therefore, are considered towers.

Citing Conn. Gen. Stat. § 16-247h, Extenet also claims in a conclusory manner that "the proposed DAS installation is within the exclusive jurisdiction of the [Connecticut Department of Public Utility Control]." Petition at 11. However, Extenet is unable to point to any case law or language in § 16-247h that confers such "exclusive jurisdiction" upon the DPUC. Further, Extenet ignores express statutory language in Conn. Gen. Stat. §§ 16-50x(a) and 16-50w conferring such exclusive jurisdiction upon the Council.

In sharp contrast to § 16-247h, Conn. Gen. Stat. § 16-50x(a) provides that "the [C]ouncil shall have *exclusive jurisdiction* over the location and type of facilities and over the location and type of modifications of facilities subject to the provisions of subsection (d) of this section." (emphasis added); see *Westport v. Conn. Siting Council*, 47 Conn. Supp. 382, 396 (2001), *aff'd per curiam*, 260 Conn. 266 (2002) ("Under the provisions of General Statutes §16-50x(a), the council has 'exclusive jurisdiction over the location and type' of certain statutorily defined facilities.") In addition, Conn. Gen. Stat. § 16-50w provides that "[i]n the event of any conflict between the provisions of this chapter and any provisions of the general statutes, as amended, or

any special act, this chapter shall take precedence.” Accordingly, the Council, and not the DPUC, has exclusive jurisdiction over the siting of Extenet’s DAS.

While it is undisputed that the DPUC has *some* jurisdiction over Extenet, Extenet apparently confuses (i) the DPUC’s authority to issue a certificate of public convenience and necessity (“CPCN”) to a “certified telecommunications provider” under Conn. Gen. Stat. § 16-247g with (ii) the Council’s exclusive jurisdiction over the siting of telecommunication towers and associated telecommunications equipment. As a “facilities-based provider of non-switched transport telecommunications services,” Petition at 9, Extenet applied for and received a CPCN from the DPUC pursuant to Conn. Gen. Stat. § 16-247g, *id.* at 9-10. In issuing a CPCN under § 16-247g, the DPUC considers whether an applicant “possesses and demonstrates adequate financial resources, managerial ability and technical competency to provide the proposed service.” Conn. Gen. Stat. § 16-247g(c). However, unlike the Council’s mandate under Conn. Gen. Stat. § 16-50p(b), the DPUC does *not* consider “[t]he nature of the probable environmental impact of the facility” when issuing a CPCN. In sum, while the DPUC has jurisdiction over certain aspects of the operations of a “certified telecommunications provider” such as Extenet, that jurisdiction does not supplant the Council’s exclusive jurisdiction over the siting of Extenet’s “facility.”¹


¹ Further, given that the Council’s exclusive jurisdiction over facilities includes “telecommunication towers, including associated telecommunications equipment, owned or operated by . . . a *certified telecommunications provider*,” Conn. Gen. Stat. § 16-50i(a)(6) (emphasis added), the legislature obviously did not intend that the DPUC’s jurisdiction over the licensing of “certified telecommunications provider” such as Extenet would displace the Council’s exclusive jurisdiction over the siting of such facilities.

II. CONCLUSION

For the reasons set forth above, Sprint respectfully requests that the Council conclude that it has jurisdiction over Extenet's DAS.

Respectfully submitted,

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Certificate of Service

I hereby certify that on September 7, 2007, a copy of Sprint Nextel's Brief in Opposition to Extenet's Petition was sent via first-class mail to:

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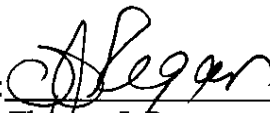
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